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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2020–0010; Notice No. 195]

RIN: 1513–AC71

Proposed Establishment of the Virginia Peninsula Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 673,059-acre “Virginia Peninsula” viticultural area in southeastern Virginia. The proposed viticultural area is not located within, nor does it contain, any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2020–0010 as posted on Regulations.gov (<https://www.regulations.gov>), the Federal e-rulemaking portal.

Please see the “**Public Participation**” section of this document below for full details on how to comment on this proposal via Regulations.gov or U.S. mail, and for full details on how to obtain copies of this document, its supporting materials, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013, (superseding Treasury Order 120-01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the

establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Virginia Peninsula Petition

TTB received a petition from the Williamsburg Winery proposing to establish the 673,059-acre “Virginia Peninsula” AVA. The proposed AVA is located in southeastern Virginia and encompasses the counties of James City, York, New Kent, and Charles City, as well as the independent cities of Poquoson, Hampton, Newport News, and Williamsburg. At the time the petition was submitted, the proposed AVA had 5 commercial vineyards, covering a total of approximately 112 acres. According to the petition, an additional 61 acres of

vineyards are planned for planting in the near future. In addition, there are 5 wineries located within the proposed AVA.

According to the petition, the distinguishing features of the proposed Virginia Peninsula AVA are its geology and climate. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this proposed rule come from the petition for the proposed Virginia Peninsula AVA and its supporting exhibits.

Name Evidence

The proposed Virginia Peninsula AVA is located on Virginia's southernmost peninsula on the western shore of the Chesapeake Bay. The petition included multiple examples of local, State, and Federal web sites that refer to the region of the proposed AVA as "Virginia Peninsula." For example, the government web site for New Kent County, which is located within the proposed AVA, notes that the county airport's location "on the Virginia Peninsula" allows visitors easy access to various historic and natural recreational sites.¹ The Virginia travel and tourism site's web page for the city of Hampton, which is within the proposed AVA, notes that the city is "located on the Virginia Peninsula."² Finally, the National Weather Service's web site includes a web page titled "The Hurricane History of Central and Eastern Virginia" which notes that Hurricane Ernesto caused significant damage "across portions of the Virginia Peninsula"³ in 2006.

¹ www.co.new-kent.va.us/index.aspx?nid=177.

² virginia.org/cities/Hampton/.

³ www.weather.gov/media/akq/miscNEWS/hurricanehistory.pdf.

The petition also included examples of various businesses and organizations within the proposed AVA that use the term “Virginia Peninsula” in their names. For example, the Virginia Peninsula Foodbank, the Virginia Peninsula Rotary Club, and the Virginia Peninsula Regional Jail all serve the region of the proposed AVA. Other examples include the Virginia Peninsula Association of Realtors, the Virginia Peninsula Chamber of Commerce, and the Virginia Peninsula Public Service Authority.

Boundary Evidence

The proposed Virginia Peninsula AVA is located on the natural feature known as the Virginia Peninsula in southeastern Virginia. The northern, eastern, and southern boundaries of the proposed AVA follow the natural features that delineate the peninsula. The York River forms the northern boundary of both the peninsula and the proposed AVA, while the James River forms the southern boundary. The eastern boundary of the proposed AVA is formed by the Chesapeake Bay. According to the petition, the western boundary of the peninsula is less precisely defined and is marked by a change in elevation and soil type. In order to approximate this change in elevation and soil, the petition places the western boundary of the proposed AVA east of the city of Richmond, along the western boundary of New Kent County and Charles City County.

Distinguishing Features

The distinguishing features of the proposed Virginia Peninsula AVA are its geology and climate.

Geology

According to the petition, the geology of the proposed AVA serves to distinguish it from the region to the west. The proposed Virginia Peninsula AVA, along with the regions to the north and south, is located on the Atlantic Coastal Plain, a region of low topographic relief with elevations ranging from sea level to approximately 250 feet. The Atlantic Coastal Plain is underlain by Cenozoic-era sand, mud, and gravel which were deposited during periods of higher sea levels. These sediments are geologically young, ranging from 4 to 5 million years in age to less than 100,000 years. As a result, very few fault lines are found within the Atlantic Coastal Plain. According to the petition, the geological formations of the proposed AVA are ideal for viticulture, as the bedrock tends to be fractured, allowing for greater root depth and greater rainfall permeability.

To the west of the proposed Virginia Peninsula AVA are the Hopewell fault and the Atlantic Seaboard Fall Line, which mark the beginning of the Piedmont and Blue Ridge regions of Virginia. The geology of these regions consists of igneous and metamorphic rock, including granite and gneiss. The bedrock is older than that of the proposed AVA, dating back approximately 700 million years to the Precambrian age. The bedrock is less porous and less fractured than the bedrock of the proposed AVA. As a result, neither grapevine roots nor rain can penetrate as deeply as within the more fractured bedrock of the proposed AVA.

Climate

The proposed Virginia Peninsula AVA is characterized by a humid subtropical climate, with long, humid summers and moderate to mild winters. The petition included on the average growing season high and low temperatures, growing season maximum high and minimum low temperatures, and the annual number of days during the growing season with temperatures over 90 and 100 degrees Fahrenheit (F) for locations within the proposed AVA, to the north, and to the south. Additionally, the petition included data on the average annual and harvest period rainfall amounts for the same locations. Data was not provided for the region to the west. The data was collected from 2013 to 2017 and is reproduced in the following tables.

Table 1: 2013–2017 Growing Season⁴ Temperatures

Location (Direction from proposed AVA)	Average High	Average Low	Average Maximum High	Average Minimum Low	Average Days over 90 Degrees F	Average Days over 100 Degrees F
Williamsburg (within)	84	65	100	35	57	2.6
West Point (North)	81	61	96	32	32	0
Surry (South)	80	62	95	35	17	0

⁴ “Growing season” is defined in the petition as the period from the last spring frost to the first fall frost. The length of the growing season varies from year to year but typically lasts from April 10 to November 8.

Table 2: 2013–2017 Rainfall

Location (Direction from proposed AVA)	Average Annual Rainfall Amounts (in Inches)	Average Harvest Period⁵ Rainfall Totals (in Inches)	Average Number of Harvest Days With Rain	Average Number of Harvest Days Without Rain	Average Number of Harvest Days with Over ½ Inch of Rain
Williamsburg (within)	40.4	7	21	59	4.8
West Point (North)	36.5	4.8	19.2	58.2	2
Surry (South)	43	10.4	24.8	51.4	6.2

The climate data suggests that the proposed Virginia Peninsula AVA has temperatures that are warmer than the regions to the north and south. Rainfall amounts in the proposed AVA are generally greater than in the region to the north and lower than in the region to the south.

According to the petition, temperatures above 90 degrees F reduce photosynthesis in grapevines. Because photosynthesis is the process which produces sugar, reduced photosynthesis rates would require fruit to hang longer to achieve optimal sugar levels. The longer hang time increases the risk of disease or animals destroying a crop before it can be harvested. The petition states that, on average, almost 30 percent of the growing season days within the proposed AVA have temperatures above 90 degrees. Additionally, frequent rains during the harvest period, particularly rainfall amounts over ½ inch, can cause

⁵ The petition defines the harvest period as the period from August 21 to November 8.

ripening fruit to swell or split and can dilute flavors. The high growing season temperatures combined with frequent rainfall during the typical harvest season mean that vineyard managers frequently face the decision whether to pick grapes before they've reached peak ripeness, or to let the fruit continue to ripen but potentially spoil.

Summary of Distinguishing Features

The evidence provided in the petition indicates that the geology and climate of the proposed Virginia Peninsula AVA distinguish it from the surrounding regions in each direction. The proposed AVA is located on the Atlantic Coastal Plain, which is comprised of geologically young sand, mud, and gravel over fractured bedrock. The geology of the proposed AVA is distinct from that of the region to the west, which is made up of the Piedmont and Blue Ridge regions, which are comprised of geologically older igneous and metamorphic rock over less-fractured bedrock. Climate distinguishes the proposed AVA from the regions to the north and south, with average maximum and minimum temperatures being warmer in the proposed AVA than in both of the other regions. Additionally, when compared to the region to the south, the proposed AVA has lower average annual rainfall amounts and more harvest days without rainfall. Average annual and harvest period rainfall amounts in the proposed AVA are higher than those within the region to the north.

TTB Determination

TTB concludes that the petition to establish the approximately 673,059-acre “Virginia Peninsula” AVA merits consideration and public comment, as invited in this document.

Boundary Description

See the narrative boundary descriptions of the petitioned-for AVA in the proposed regulatory text published at the end of this document.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed Virginia Peninsula AVA boundary on the AVA Map Explorer on the TTB website, at <https://www.ttb.gov/wine/ava-map-explorer>.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, “Virginia Peninsula,” will be recognized as a name of viticultural significance under §4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using “Virginia Peninsula” in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if this proposed rule is adopted as a final rule.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed Virginia Peninsula AVA. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, geology, climate, and other required information submitted in support of the AVA petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Virginia Peninsula AVA on wine labels that include the term “Virginia Peninsula,” as discussed above under **Impact on Current Wine Labels**, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes

that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this proposal by using one of the following two methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this document within Docket No. TTB–2020–0010 on “*Regulations.gov*,” the Federal e-rulemaking portal, at <https://www.regulations.gov>. A direct link to that docket is available under Notice No. 195 on the TTB Web site at <https://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the “Help” tab at the top of the page.

- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Box 12, Washington, DC 20005.

Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 195 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does

not acknowledge receipt of comments, and TTB considers all comments as originals.

Your comment must clearly state if you are commenting on your own behalf or on behalf of an organization, business, or other entity. If you are commenting on behalf of an organization, business, or other entity, your comment must include the entity's name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this document, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2020–0010 on the Federal e-rulemaking portal, *Regulations.gov*, at <https://www.regulations.gov>. A direct link to that docket is available on the TTB Web site at <https://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 195. You may also reach the relevant docket through the

Regulations.gov search page at <https://www.regulations.gov>. For instructions on how to use *Regulations.gov*, click on the site's "Help" tab at the top of the page.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You may also obtain copies of this proposed rule, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or any similarly-sized documents that may be included as part of the AVA petition. Contact TTB's Regulations and Rulings Division by e-mail using the web form at <https://www.ttb.gov/contact-rrd>, or by telephone at 202-453-1039, ext. 175, to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Subpart C is amended by adding § 9.____ to read as follows:

§ 9.____ Virginia Peninsula.

(a) *Name.* The name of the viticultural area described in this section is “Virginia Peninsula”. For purposes of part 4 of this chapter, “Virginia Peninsula” is a term of viticultural significance.

(b) *Approved maps.* The 5 United States Geological Survey (USGS) 1:100,000 scale topographic maps used to determine the boundary of the Virginia Peninsula viticultural area are titled:

- (1) Norfolk, Virginia–North Carolina; 1985;
- (2) Petersburg, Virginia, 1984;
- (3) Richmond, Virginia, 1984;
- (4) Tappahannock, Virginia–Maryland; 1984; and
- (5) Williamsburg, Virginia, 1984.

(c) *Boundary.* The Virginia Peninsula viticultural area is located in James City, York, New Kent, and Charles City Counties, Virginia, as well as the independent Virginia cities of Poquoson, Hampton, Newport News, and Williamsburg. The boundary of the Virginia Peninsula viticultural area is as described below:

- (1) The beginning point is on the Norfolk, Virginia–North Carolina map at the intersection of the Newport News City boundary and the James River Bridge. From the beginning point, proceed northwesterly along the Newport News City boundary to the point in the James River where the city boundary becomes concurrent with the James City County boundary; then
- (2) Proceed northwesterly along the James City County boundary to the point where it becomes concurrent with the Charles City County boundary; then
- (3) Proceed along the Charles City County boundary, crossing onto the Petersburg, Virginia, map and continuing along the Charles City County

boundary to the point where it intersects the Henrico County boundary at Turkey Island Creek; then

(4) Proceed north-northeasterly along the concurrent Henrico County–Charles City County boundary to its intersection with the Chickahominy River, which is concurrent with the New Kent County boundary; then

(5) Proceed northwesterly along the Chickahominy River–New Kent County boundary, crossing onto the Richmond, Virginia, map to its intersection with the Hanover County boundary; then

(6) Proceed northeasterly along the Hanover County–New Kent County boundary to its intersection with the King William County boundary at the Pamunkey River; then

(7) Proceed southeasterly along the King William County–New Kent County boundary, crossing onto the Tappahannock, Virginia–Maryland map, to the intersection of the concurrent county boundary with the York River; then

(8) Proceed southeasterly along the York River, crossing onto the Williamsburg, Virginia map, to the intersection of the river with the Chesapeake Bay north of Tue Point; then

(9) Proceed southeast in a straight line to the shoreline of Marsh Point; then

(10) Proceed southeasterly, then southwesterly along the shoreline to the Hampton Roads Bridge-Tunnel; then

(11) Proceed southwest in a straight line, crossing onto the Norfolk, Virginia–North Carolina map, to the northeastern terminus of the Hampton City boundary; then

(12) Proceed southwesterly along the Hampton City boundary to the point where it intersects with the Newport News City boundary; then

(13) Proceed southwesterly, then northwesterly along the Newport News City boundary, returning to the beginning point.

Signed: July 22, 2020.

Mary G. Ryan,

Acting Administrator.

Approved: August 3, 2020.

Timothy E. Skud,

*Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).*

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